

Coast Guard, DHS

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the VSP at the next VSP submittal (either renewal or amendment), but must be made available to the Coast Guard upon request.

[USCG–2003–14749, 68 FR 39302, July 1, 2003, as amended at 68 FR 60513, Oct. 22, 2003; USCG–2004–18057, 69 FR 34925, June 23, 2004; USCG–2006–24196, 72 FR 3579, Jan. 25, 2007]

§ 104.125 Noncompliance.

When a vessel must temporarily deviate from the requirements of this part, the vessel owner or operator must notify the cognizant COTP, and either suspend operations or request and receive permission from the COTP to continue operating.

[USCG–2003–14749, 68 FR 60513, Oct. 22, 2003]

§ 104.130 Waivers.

Any vessel owner or operator may apply for a waiver of any requirement of this part that the owner or operator considers unnecessary in light of the nature or operating conditions of the vessel. A request for a waiver must be submitted in writing with justification to the Commandant (CG-54) at 2100 Second St., SW., Washington, DC 20593. The Commandant (CG-54) may require the vessel owner or operator to provide additional data for determining the validity of the requested waiver. The Commandant (CG-54) may grant, in writing, a waiver with or without conditions only if the waiver will not reduce the overall security of the vessel, its passengers, its crew, or its cargo, or facilities or ports that the vessel may visit.

[USCG–2003–14749, 68 FR 39302, July 1, 2003, as amended by USCG–2008–0179, 73 FR 35009, June 19, 2008]

§ 104.135 Equivalents.

For any measure required by this part, the vessel owner or operator may propose an equivalent as provided in § 101.130 of this subchapter.

§ 104.140 Alternative Security Programs.

A vessel owner or operator may use an Alternative Security Program as approved under § 101.120 of this subchapter if:

(a) The Alternative Security Program is appropriate to that class of vessel;

(b) The vessel is not subject to the International Convention for Safety of Life at Sea, 1974; and

(c) The Alternative Security Program is implemented in its entirety.

[USCG–2003–14749, 68 FR 39302, July 1, 2003, as amended at 68 FR 60513, Oct. 22, 2003]

§ 104.145 Maritime Security (MARSEC) Directive.

Each vessel owner or operator subject to this part must comply with any instructions contained in a MARSEC Directive issued under § 101.405 of this subchapter.

§ 104.150 Right to appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal as described in § 101.420 of this subchapter.

Subpart B—Vessel Security Requirements

§ 104.200 Owner or operator.

(a) Each vessel owner or operator must ensure that the vessel operates in compliance with the requirements of this part.

(b) For each vessel, the vessel owner or operator must:

(1) Define the security organizational structure for each vessel and provide all personnel exercising security duties or responsibilities within that structure with the support needed to fulfill security obligations;

(2) Designate, in writing, by name or title, a Company Security Officer (CSO), a Vessel Security Officer (VSO) for each vessel, and identify how those officers can be contacted at any time;

(3) Ensure personnel receive training, drills, and exercises enabling them to perform their assigned security duties;

(4) Inform vessel personnel of their responsibility to apply for and maintain a TWIC, including the deadlines and methods for such applications, and of their obligation to inform TSA of any event that would render them ineligible for a TWIC, or which would invalidate their existing TWIC;

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(5) Ensure vessel security records are kept;

(6) Ensure that adequate coordination of security issues takes place between vessels and facilities; this includes the execution of a Declaration of Security (DoS);

(7) Ensure coordination of shore leave, transit, or crew change-out for vessel personnel, as well as access through the facility of visitors to the vessel (including representatives of seafarers' welfare and labor organizations), with facility operators in advance of a vessel's arrival. Vessel owners or operators may refer to treaties of friendship, commerce, and navigation between the U.S. and other nations in coordinating such leave. The text of these treaties can be found at <http://www.marad.dot.gov/Programs/treaties.html>;

(8) Ensure security communication is readily available;

(9) Ensure coordination with and implementation of changes in Maritime Security (MARSEC) Level;

(10) Ensure that security systems and equipment are installed and maintained;

(11) Ensure that vessel access, including the embarkation of persons and their effects, is controlled;

(12) Ensure that TWIC procedures are implemented as set forth in this part, including;

(i) Ensuring that only individuals who hold a TWIC and are authorized to be in secure areas are permitted to escort;

(ii) Identifying what action is to be taken by an escort, or other authorized individual, should individuals under escort engage in activities other than those for which escorted access was granted; and

(iii) Notifying vessel employees, and passengers if applicable, of what parts of the vessel are secure areas, employee access areas, and passenger access areas, as applicable, and ensuring such areas are clearly marked.

(13) Ensure that restricted areas are controlled and TWIC provisions are coordinated, if applied to such restricted areas;

(14) Ensure that protocols consistent with § 104.265(c) of this part, for dealing with individuals requiring access who

report a lost, damaged, or stolen TWIC, or who have applied for and not yet received a TWIC, are in place;

(15) Ensure that cargo and vessel stores and bunkers are handled in compliance with this part;

(16) Ensure restricted areas, deck areas, and areas surrounding the vessel are monitored;

(17) Provide the Master, or for vessels on domestic routes only, the CSO, with the following information:

(i) Parties responsible for appointing vessel personnel, such as vessel management companies, manning agents, contractors, concessionaires (for example, retail sales outlets, casinos, etc.);

(ii) Parties responsible for deciding the employment of the vessel, including time or bareboat charters or any other entity acting in such capacity; and

(iii) In cases when the vessel is employed under the terms of a charter party, the contract details of those documents, including time or voyage charters; and

(18) Give particular consideration to the convenience, comfort, and personal privacy of vessel personnel and their ability to maintain their effectiveness over long periods; and

(19) If applicable, ensure that protocols consistent with § 104.267 of this part, for dealing with newly hired employees who have applied for and not yet received a TWIC, are in place.

[USCG–2003–14749, 68 FR 39302, July 1, 2003, as amended by USCG–2003–14749, 68 FR 60513, Oct. 22, 2003; USCG–2006–24196, 72 FR 3579, Jan. 25, 2007]

§ 104.205 Master.

(a) Nothing in this part is intended to permit the Master to be constrained by the Company, the vessel owner or operator, or any other person, from taking or executing any decision which, in the professional judgment of the Master, is necessary to maintain the safety and security of the vessel. This includes denial of access to persons—except those identified as duly authorized by the cognizant government authority—or their effects, and refusal to load cargo, including containers or other closed cargo transport units.

(b) If, in the professional judgment of the Master, a conflict between any